

Article Eight

Nonconforming Structures, Lots, and Uses



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8.1 Intent

Upon adoption of this Zoning Ordinance and Official Zoning Map, some buildings, structures, lots, and uses may no longer conform to the regulations of the zoning district in which they are located. For this reason, Article Eight has been generated to provide the rules, policies and regulations that apply to these buildings, structures, lots, and uses referred to as Legal-Nonconforming.

8.2 Distinction Between Nonconforming and Legal-Nonconforming

A building, structure, or lot which was constructed or is being used without an approved building permit, improvement location permit or approval from the BZA or Plan Commission is considered nonconforming. A nonconforming property shall be subject to actions and penalties allowed by this Zoning Ordinance and all other applicable municipal law and must be altered to conform with all applicable standards and regulations of this Zoning Ordinance. Further, a nonconforming building, structure, lot or use is created at the fault of the owner, tenant or property manager.

Legal-Nonconforming differs from nonconforming (illegal) in that the reason for the nonconformance is caused by a change to the Zoning Ordinance. The building, structure, lot or use has not changed, but due to the Zoning Ordinance change, the property no longer conforms to the policies and standards of the zoning district in which the property resides. When this situation occurs, the property is deemed Legal-Nonconforming or another term commonly used is "Grandfathered."

8.3 Nonconforming Buildings and Structures

- A. Any continuously occupied, lawfully established structure or building prior to the effective date of this Zoning Ordinance, or its subsequent amendments, that no longer meets the design standards due to the reasons listed below shall be deemed a Legal-Nonconforming Building or Structure.
- B. Legal-Nonconforming Building(s) or Structure(s) no longer meet one (1) or more of the following development standards of this Zoning Ordinance:
 - Front, Side and Rear Yard Setbacks,
 - Maximum Lot Coverage,
 - Minimum Main Floor Area,
 - Minimum Finished Floor Area,
 - Height,
 - Temporary Structures,
 - Landscaping,
 - Parking,
 - Accessory Structures, or
 - any other provision of this Zoning Ordinance that is applicable to the building or structure.
- C. A Legal-Nonconforming building or structure may continue provided that it remains the same or fits within the below described tolerances:
 - a. Any Legal-Nonconforming building or structure shall not be enlarged or altered in a manner that increases its nonconformity but any building or structure or portion thereof may be altered to decrease its nonconformity.
 - b. Any Legal-Nonconforming building or structure which is damaged or destroyed by more than 66% of its fair market value shall thereafter conform to the regulations of the district in which it is located.
- D. If a building or structure is moved for any reason, for any distance, it shall thereafter conform to the provisions of this Zoning Ordinance.

8.4 Nonconforming Lots of Record

- A. All legally established and recorded lots prior to the effective date of this Zoning Ordinance, or its subsequent amendments, that no longer meet the lot standards listed below shall be deemed a Legal-Nonconforming Lot of Record. A Legal-Nonconforming Lot of Record no longer meets one (1) or more of the following lot standards of this Zoning Ordinance:
- Lot Area,
 - Lot Width,
 - Lot Depth,
 - Lot Frontage, or
 - Any other provision of this Zoning Ordinance that is applicable to Lots.
- B. Legal-Nonconforming Lots of Record may be built upon only if the proposed use is permitted and all development standards of the applicable Zoning District of this Zoning Ordinance are met.

8.5 Nonconforming Uses of Structures, Land, or Structures and Land in Combination

Any continuous, lawful use of structures, land, or structures and land in combination established prior to the effective date of this Zoning Ordinance or its subsequent amendments that is no longer a permitted use in the district where it is located shall be deemed a Legal-Nonconforming Use. A Legal-Nonconforming use may continue provided that it remains otherwise lawful, subject to the following conditions:

- A. No existing structure devoted to a Legal-Nonconforming use shall be enlarged, expanded, increased, extended, constructed, reconstructed, moved, or structurally altered unless it:
- a. Complies with section 8.5 D for limited and small expansions, or
 - b. Changes the use of the structure to a use permitted in the district in which it is located, or
 - c. Changes the use to a less intensive Nonconforming Use and is approved by the Planning Director or Plan Commission.
- B. No building or structure shall be constructed in connection with an existing Legal-Nonconforming use of land.
- C. Any Legal-Nonconforming use of a structure may be extended throughout any parts of a building which were plainly arranged or designed for such use at the effective date of this Zoning Ordinance or its subsequent amendments, but no such use shall be extended to occupy any land outside the building.
- D. In the case of a Legal-Nonconforming use of structure, the structure may be expanded two times only. Each of the two expansions may not exceed 10% of the existing floor area. The expansion shall conform to all applicable development standards except for landscaping, unless a variance of developmental standards is received from the Board of Zoning Appeals. If the structure is a commercial or industrial use in a residential district, the Planning Director shall assign appropriate parking, landscaping and other common development standards for such uses.
- E. If no structural alterations are made, a Legal-Nonconforming use of structure or structure and land in combination may be changed to another Legal-Nonconforming use, provided that the Planning Director shall make specific findings that the proposed use is equally appropriate or more appropriate to the district than the existing Legal-Nonconforming use. The Planning Director may impose appropriate development standards from Article Six common for such a use.
- F. If a Legal-Nonconforming use is discontinued or abandoned for 12 consecutive months, except when government action impedes access to the premises, any subsequent use of such land, structure or land and structure shall conform to the provisions of this Zoning Ordinance.
- G. When a Legal-Nonconforming use is superseded by a permitted use, it shall thereafter conform to regulations of the district. The Legal-Nonconforming use may not thereafter be resumed.
- H. Where a Legal-Nonconforming use applies to a structure, removal of the structure shall eliminate the nonconforming structure of the land.

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- I. Where a Legal-Nonconforming use applies to a structure that is damaged or destructed more than 66% of its fair market value at the time of destruction. The Legal-Nonconforming use may continue, but the structure must be rebuilt to conform to the current zoning regulations. In this situation, the Legal Nonconforming use must not be expanded such that the property becomes more nonconforming.

8.6 Nonconforming Signs

Any sign lawfully existing on the effective date of this Zoning Ordinance, or amendment thereto, that does not conform to all the standards and regulations of this Zoning Ordinance is considered a Legal-Nonconforming sign.

- A. Signs which existed prior to the time this Zoning Ordinance was passed and were in conformance with previous ordinances will be legally nonconforming until such time a major change is made to the sign. Major changes include changing the size, changing the height, adding lights, altering lighting, and/or relocation.
- B. All registered Legal-Nonconforming signs shall be kept in good repair, safe, neat, clean and attractive condition. In the event nonconforming signs are not kept in said condition or are demolished by any force whatsoever to the extent of 50% or more of the fair market value of the sign structure, said signs shall then be made to conform to this Zoning Ordinance.
- C. A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer conducted on the premises. If the owner or lessee fails to remove the sign, the Plan Commission or Planning Director shall give the owner 30 days written notice to remove it. Upon failure to comply with this notice, the Plan Commission or Planning Director may remove the sign at cost to the property owner or lessee.
- D. Legal nonconforming signs which are structurally altered by a major change, relocated, or replaced shall comply immediately with all provisions of this Zoning Ordinance.

8.7 Repairs and Maintenance

The following applies to Legal-Nonconforming structures or buildings, and Legal-Nonconforming uses of structures, or structures and land in combination.

- A. Work may be done for ordinary repairs or replacement of walls, heating, fixtures, wiring, or plumbing; under the condition that the square footage and volume of usable space existing when the structure became nonconforming shall not be increased.
- B. If a structure or portion of a structure were to become unsafe or condemned due to lack of repairs or maintenance, and is declared by an authorized official to be unsafe or condemned due to physical condition; the building or structure shall be restored, repaired or rebuilt within 6 months of the declaration. If the improvements have not been made within the 6 months, all future improvements must conform to all standards and regulations within this Zoning Ordinance.
- C. If a building or structure becomes unsafe or unlawful due to physical condition and is razed, the building or structure shall be rebuilt in conformity with the district in which it is located.
- D. Nothing in this Section shall be deemed to prevent the strengthening, repairing, or restoring to a safe condition of any building or structure or part thereof declared to be unsafe by any official charged with protecting public safety upon order of such official.